

**Agreement and  
Certification**

U.S. Department of Housing  
and Urban Development  
Office of Housing

OMB Approval No. 0000-0000  
(exp. 00/00/00)

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To the Secretary of Housing and Urban Development:      Date \_\_\_\_\_

Project No. \_\_\_\_\_

**This Agreement** is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among \_\_\_\_\_ (hereinafter, Borrower), and \_\_\_\_\_ (hereinafter, Lender), and (if applicable), \_\_\_\_\_ (hereinafter, the General Contractor), and the United States Department of Housing and Urban Development (hereinafter, HUD). As used herein, the terms Borrower and Lender shall be deemed to have the meanings set forth, respectively, in the HUD regulatory agreement applicable to this transaction.

Borrower has applied to Lender for a mortgage loan (hereinafter, the Mortgage Loan) for one of the following purposes [check applicable box] in connection with a facility identified as HUD Project No. \_\_\_\_\_:

/ / Constructing or substantially rehabilitating a housing project or health care facility, the work to be performed by the General Contractor, and Lender has applied to HUD for insurance of the Mortgage Loan in the amount of \$\_\_\_\_\_, under Section \_\_\_\_\_ of the National Housing Act, as amended, in which case all paragraphs below shall apply;

or

/ / Financing or refinancing, after the completion of repairs (or satisfactory arrangements for completion of repairs), of a housing project or health care facility, and Lender has applied to HUD for insurance of the Mortgage Loan in the amount of \$\_\_\_\_\_, under Section \_\_\_\_\_ of the National Housing Act, as amended, in which case Paragraphs 1, 2, 6 and 8, below, shall apply;

HUD has issued a Commitment to insure the Mortgage Loan in said amount pursuant to said Section and regulations and directives issued pursuant thereto. The amount of the Mortgage Loan is subject to reduction, as provided in said Act, regulations and directives, and this Agreement is required accordingly.

In consideration of the premises, the parties acknowledge and agree as follows:

1. Prior to receipt of the final advance under the Mortgage Loan, and within the time fixed by the Mortgage Loan documents, Borrower agrees, if required by HUD procedures for cost certification and the National Housing Act, to submit to HUD (a) a fully completed and executed Mortgagor's Certificate of Actual Cost; and (b) a fully completed and executed Contractor's Certificate of Actual Cost, or Subcontractor's Certificate of Actual Cost, on forms prescribed by HUD. Borrower and the General Contractor understand, agree and will insure that each of the certificates of cost is supported by the certificate of an independent Certified Public Accountant or independent public accountant in form acceptable to HUD, if required by HUD procedures for cost certification.

2. Borrower and Lender agree that the total advances under the Mortgage Loan cannot exceed the amount permitted by Section 227 of the National Housing Act, as amended, and the regulations and directives issued pursuant thereto. In the case of Mortgage Loans insured pursuant to Sections 223(a) or 223(f) of the National Housing Act, as amended, Borrower and Lender understand and agree that the Commitment and Mortgage Loan may be reduced to comply with the provisions of said Section 227 and regulations and directives issued pursuant thereto, and Borrower and Lender further agree to execute such instruments as may be required to accomplish such reduction.

3. Borrower agrees that if it receives Mortgage Loan funds in excess of that permitted under the National Housing Act, and the regulations and directives issued pursuant thereto, it will pay upon demand forthwith to Lender any such excess for application to the reduction of the then-outstanding principal balance of the Mortgage Loan. Lender agrees that upon its receipt of such excess the contract of mortgage insurance is reduced accordingly, and Borrower and Lender agree to execute such instruments as may be required to accomplish such reduction. Borrower further agrees that if HUD, for cost certification purposes, accepts estimates for any items, Borrower will, at final endorsement, establish a cash escrow to pay all the "to be paid in cash items" identified in its Certificate of Actual Cost, and to pay debts to third parties who made the original disbursement for an item listed as paid on the Certificate, unless documentation, satisfactory to HUD, is submitted evidencing that Borrower paid these amounts after the submission of its Certificate. Borrower understands that the items covered by this cash escrow must be paid within 45 days of the date of final endorsement, except for those items in dispute, involved in litigation or those items that are non-critical repairs to be completed after endorsement and covered by an appropriate escrow agreement. If Borrower's actual cost is less than the estimates accepted for cost certification purposes, and HUD determines that this difference plus the net amount (total receipts less expenses of perfecting claims) of settlement of claims against bonding companies or others, would have required a reduction of the Mortgage Loan, Borrower understands that prepayment of the Mortgage Loan is required in an amount equal to the scheduled monthly principal payments, to the extent possible, and any remaining balance will be deposited to the project's Reserve Fund for Replacements.

4. Borrower certifies that any financial or business interests or family relationships which exist between Borrower, or any of its officers, directors, stockholders, partners or principals (hereinafter, Principals) with the Architect or with the General Contractor, or subcontractors, suppliers, or equipment lessors, or with any of the Principals of any of the foregoing entities (hereinafter, an Identity of Interest) for the project are herewith listed by name, title, address, relationship and interest: *(Attach exhibit if necessary. If None, so state).*

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5. Borrower agrees to notify HUD in writing, and within 10 days of the event, of any change in relationships covered by paragraph 4 herein. In the event that such change establishes an Identity of Interest between Borrower or its Principals, and the General Contractor or its Principals, Borrower's Certificate of Actual Cost will be accompanied by the Contractor's Certificate of Actual Cost, in the form prescribed by HUD; and, if required by HUD, similar certificates by any subcontractor, supplier, or equipment lessor covered by this paragraph 5. It is agreed that the absence of such notice may be treated by HUD as a representation that no such change in relationship has occurred.

6. Borrower agrees to maintain and keep adequate records of all costs incurred in connection with the project, and to make such records available for examination by HUD upon request.

7. If this Agreement discloses an Identity of Interest between Borrower and the General Contractor, Borrower will include in the construction contract a provision requiring the General Contractor, upon completion of the project, to submit to Borrower for delivery to HUD its Certificate of Actual Cost, in the form prescribed by HUD. Borrower further agrees to include in said contract the requirement that the General Contractor will maintain adequate records of all such costs, and make such records, documents, contracts and accounts available for review upon request by HUD.

8. Borrower agrees that it will include in the construction contract, and require the inclusion in all subcontracts, whether for labor, material, or equipment leases, a provision that if there is, or comes into being, an Identity of Interest between Borrower and any subcontractor; or, in those cases in which the General Contractor is required to certify actual costs, between the General Contractor and any subcontractor, then, if HUD so requires, such subcontractor will submit to HUD a Certificate of Actual Cost in the form and with the audit standards prescribed by HUD, including the deduction of all kickbacks, rebates, adjustments, discounts, or any other arrangements in the nature thereof. For purposes of determining actual cost, no profit or general overhead may be included in the subcontract unless HUD has granted advance written approval of a specific dollar amount or a specific percentage.

9. Borrower agrees that if there comes into being any Identity of Interest between Borrower and the Architect, or between the General Contractor and the Architect, the Architect will immediately be relieved of inspection duties and the maximum Architect's fees allowable for cost certification purposes will be \$\_\_\_\_\_ for design services only, and no fees will be allowed for supervision.

10. If HUD processed the project to include a Builder's and Sponsor's Profit and Risk Allowance (hereinafter, BSPRA) under the National Housing Act, as amended, Borrower and General Contractor agree as follows:

a. The form of construction contract will be cost-plus, with a maximum upset price. So long as the requisite Identity of Interest is maintained through final endorsement of the Mortgage Loan, and subject to paragraph 10.c herein, then in lieu of the General Contractor's fee, Borrower will be entitled to include in its Certificate of Actual Cost a BSPRA. The BSPRA will be determined by applying the profit and risk percentage provided for in Section 227 of the National Housing Act, as amended, and the regulations and directives issued pursuant thereto, that were in effect on the date of the Commitment, to the actual cost, as accepted by HUD, of those items which, under the provisions of the said Act, regulations and directives, are included in computing the BSPRA. For the purpose of determining actual cost, the General Contractor's general overhead will not exceed \$\_\_\_\_\_.

b. If the Identity of Interest between Borrower and General Contractor is not maintained through final endorsement of the Mortgage Loan, then the BSPRA provided for in paragraph 10.a herein will not be applicable. Instead, Borrower will be entitled to include in its Certificate of Actual Cost a Sponsor's Profit and Risk Allowance (hereinafter, SPRA). The SPRA will be determined by applying the profit and risk percentage provided for in Section 227 of the National Housing Act, as amended, and the regulations and directives issued pursuant thereto, that were in effect on the date of the Commitment, to the actual cost, as accepted by HUD, of those items which, under the provisions of the said Act, regulations and directives, are included in computing the SPRA.

c. If more than 50 percent of the actual cost of construction is subcontracted with any one contractor or subcontractor, or more than 75 percent with three or fewer contractors or subcontractors (hereinafter, the 50-75% Rule), the BSPRA provided for in paragraph 10.a herein will not be allowed as an actual cost, and Borrower will be limited to the inclusion on its Certificate of Actual Cost of the SPRA cited in paragraph 10.b herein. Further, in that event, for the purpose of determining actual cost, HUD will not allow any expense for the General Contractor's general overhead.

11. If HUD did not process the project to include a BSPRA, Borrower and General Contractor agree that the provisions of this paragraph 11 apply. If there is an Identity of Interest between Borrower and the General Contractor, or in any other

circumstance required by HUD, the form of construction contract will be cost-plus, with a maximum upset price. For the purpose of determining actual cost, the General Contractor's fee will not exceed \$\_\_\_\_\_, and the general overhead will not exceed \$\_\_\_\_\_. In the event that the 50-75% Rule is violated, for the purpose of determining actual cost, HUD will not allow any expense for the General Contractor's fee and general overhead. If an Identity of Interest does not exist or is not maintained through final endorsement of the Mortgage Loan, and if authorized by the National Housing Act, as amended, and the regulations and directives issued pursuant thereto, that were in effect on the date of the Commitment, Borrower will be allowed to include in its Certificate of Actual Cost the SPRA cited in paragraph 10.b of this Agreement.

12. Borrower and the General Contractor understand that for purposes of the 50-75% Rule, the terms "contractor" and "subcontractor" include material suppliers and equipment lessors, and any two or more contractors or subcontractors having an Identity of Interest or common ownership are considered as one contractor or subcontractor. Further, it is understood that the 50-75% Rule is not applicable to manufacturers of industrialized housing, trade items performed by persons on the General Contractor's payroll, mobile home park programs, supplemental loan programs, or rehabilitation programs other than gut rehabilitation.

13. Borrower and the General Contractor further understand and agree that if an Identity of Interest arises between Borrower and the General Contractor following their execution of a lump-sum form of construction contract, allowable costs will be governed by the applicable provisions of paragraphs 11 and 12 of this Agreement.

14. The Contractor and Borrower represent, for themselves and any person or entity with which they are affiliated, as follows:

- a. All costs for work to be performed on the Project or related property are reflected in the Construction Contract and in the Contractor's and Mortgagor's Cost Breakdown.
- b. There are no agreements, contracts or arrangements, for costs, fees, consideration or compensation to the Contractor, its principals, employees or affiliates other than as recited as the contract sum in Article 4 (in the case of a Cost Plus Contract) or Article 4A (in the case of a Lump Sum Contract) except for BSPRA.
- c. Borrower and Contractor acknowledge that the existence of undisclosed, agreements, contracts, or other arrangements concerning construction work to be performed on property covered by a security instrument insured by HUD or concerning the compensation payable for such work, whether or not such agreement, contract or arrangement is with a party to the construction contract, is not permitted in HUD-insured transactions. Borrower and Contractor acknowledge that full disclosure to HUD of all such agreements, contracts or arrangements, if any, is to permit accurate determination of the HUD-insured

Mortgage Loan / construction amount. Failure to disclose any such agreements, contracts, or arrangements may constitute grounds for administrative sanctions and /or civil or criminal penalties.

d. No agreement, contract or other arrangement, whether or not disclosed, shall increase the HUD-approved construction amount. The existence of any such agreement, contract or arrangement shall not impute to Lender or HUD of any obligation, financial or otherwise, to Borrower, Contractor, or other third-party.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

BORROWER

LENDER

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name and title

GENERAL CONTRACTOR

UNITED STATES DEPARTMENT OF  
HOUSING & URBAN DEVELOPMENT

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Authorized Agent